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| APPLICATION NO.                                       | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO.   | CONFIRMATION NO. |
|---|-------------|----------------------|-----------------------|------------------|
| 09/657,111  | 09/07/2000  | Curtis A. Vock       | 4513/011 (L&G 389014) | 1286             |
| 24283   | 7590        | 10/08/2003           | EXAMINER              |                  |
| PATTON BOGGS<br>PO BOX 270930<br>LOUISVILLE, CO 80027 |             |                      | LAU, TUNG S           |                  |
|   |             |                      | ART UNIT              | PAPER NUMBER     |
|   |             |                      | 2863                  |                  |

DATE MAILED: 10/08/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/657,111

Applicant(s)

VOCK ET AL.

Examiner

Tung S Lau

Art Unit

2863

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 08 September 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8, and 12 is/are rejected.
- 7) ☒ Claim(s) 9, 10, 11 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

- a. Claims 1, 2, 3, 4, 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sawasaki et al. (U.S. Patent 5,838,365).

Sawasaki discloses a method for determining peak altitude of a moving object through a digital camera (fig. 2, unit 1, col. 2, lines 34-52, Fig. 3-4), viewing the object (fig. 8-9), assessing the frames of data provided by the digital camera (col. 7, lines 17-39), determining the peak altitude by comparing data frame of the object (col. 29, lines 46-56, col. 30, lines 38-60, Col. 32, Lines 7-15, Col. 33-34, Lines 52-11), the process is automatic (fig. 24), processing within the frames of data (col. 7, lines 18-39), data based on time (fig. 17, 22, 27), successive frames of data, time interval (fig. 17).

Sawasaki does not disclose the use for a sportsman, airtime for track, however, it has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed

apparatus from a prior art apparatus satisfying the claimed structural limitations.

Ex parte Masham, 2 USPQ2d-1647 (1987).

b. Claims 7 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sawasaki et al. (U.S. Patent 5,838,365) in view of McSheery et al. (U.S. Patent 6,324,296).

Sawasaki discloses a method including the subject matter discussed above except the frame rate is at least 30 HZ, more than 60 Hz. McSheery discloses the frame rate is at least 30 HZ, more than 60 HZ to increase pixel resolution and accuracy of analysis (col. 3, lines 9-16, Col. 15, Lines 25-36).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Sawasaki to have the frame rate is at least 30 HZ taught by McSheery in order to increase pixel resolution and accuracy of analysis (col. 3, lines 9-16).

c. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lepley (U.S. Patent 3,710,335).

Lepley discloses a method of determining the step of mounting a radio beacon on a moving object through triangulation to determine the location of the object over time and determining airtime from location over time (abstract).

Lepley does not disclose the use for a sportsman, however, it has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. Ex parte Masham, 2 USPQ2d-1647 (1987).

***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 5 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 5 contains the trademark/trade name firewire (implementation of the IEEE 1394b standard), Where a trademark or trade name is used in a claim as a limitation to identify or describe a particular material or product, the claim does not comply with the requirements of 35 U.S.C. 112, second paragraph. See Ex parte Simpson, 218 USPQ 1020 (Bd. App. 1982). The claim scope is uncertain since the trademark or trade name cannot be used properly to identify any particular material or product. A trademark or trade name is used to identify a source of goods, and not the goods themselves. Thus, a trademark or trade name does not identify or describe the goods associated with the trademark or

trade name. In the present case, the trademark/trade name is used to identify/describe standard for high-speed data transfer (IEEE 1394b), and, accordingly, the identification/description is indefinite.

### ***Claim Objections***

3. Claims 9, 10, 11 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all the limitation of the base claim and any intervening claims.

The following is an examiner's statement of reasons for allowance: prior art fail to teach the use of a successive time intervals, a final speed prior to the landing, evaluate from first ground location to a landing location.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tung S Lau whose telephone number is 703-305-3309.

The examiner can normally be reached on M-F 9-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Barlow can be reached on 703-308-3126. The fax phone numbers for

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the organization where this application or proceeding is assigned are 703-308-5841 for regular communications and 703-308-5841 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0956.

TC2800 FAX Telephone Numbers: 703-872-9306

TC2800 Customer Service FAX - (703) 872-9317

  
John Barlow  
Supervisory Patent Examiner  
Technology Center 2800